

E-FILED on 09/15/09IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

12 LAFAYETTE HAYES

13 Plaintiff,

14 v.  
15 DR. WILLIAMS, et. al.,

16 Defendants.

No. C-05-00070 RMW

ORDER GRANTING DEFENDANTS'  
MOTION FOR SUMMARY JUDGMENT**Re Docket No. 7**

Defendants Dr. William E. Williams, Dr. John Christensen and Dr. Jessica Clarke move for summary judgment on plaintiff Lafayette Hayes' first amended complaint brought under 42 U.S.C. § 1983. Hayes opposes. Hayes also makes evidentiary objections to the declarations of Dr. Clarke, Dr. Christensen and Dr. Hayes, and objects to defendants' reply as untimely. For the reasons set forth below, the court grants defendants' motion for summary judgment.

**I. BACKGROUND**

On July 15, 2004, Lafayette Hayes injured his left knee when he fell while trying to catch a bus. Opp'n. to Mot. for Summ. J. 2, Posada Decl. in Opp'n. to Mot. for Summ. J. Ex. A ("Posada Decl."). The knee injury was aggravated on August 24, 2004, when Hayes got his leg caught between the doors of a the light rail train. *Id.* at 3. He saw a physician at the San Jose Medical Center that same day, who following an X-Ray and clinical examination, diagnosed Hayes with an

1 acute left patellar tendon rupture and scheduled a follow-up visit with an orthopedic resident for  
2 August 31, 2004, a week later. Posada Decl. at Ex. B.

3 On August 30, 2004, the day before the scheduled follow-up visit, Hayes was placed into  
4 custody at San Quentin State Prison. Opp'n at 3. Defendant Dr. Clarke saw him upon entry and  
5 prescribed Vicodin and noted that he should urgently see an orthopedist. Posada Decl. at Ex. D. She  
6 filled out a "Physicians Request for Service" for Hayes to urgently see an orthopedic specialist.  
7 Clarke Decl. Ex. A. As a result of that request, Hayes was scheduled to see Dr. Barry, an orthopedic  
8 specialist, on October 1, 2004. Dr. Clarke also recommended that Hayes be assigned to a first tier  
9 lower bunk and be given a leg brace and crutches. Clarke Decl. at 2. Plaintiff complains, however,  
10 that Dr. Clarke did not provide him with, or recommend that he be provided with, a mobility  
11 impairment vest, which would have indicated to prison guards that he was injured and might not be  
12 able to comply with orders to drop to the ground. Opp'n. 4. She also did not immediately order or  
13 take an X-ray or MRI. *Id.* at 3. Nor did Dr. Clarke, plaintiff complains, order a medical hold that  
14 would have postponed any transfer of Hayes to another prison or facility until after he received  
15 treatment for his knee. *Id.* at 4.

16 Hayes was in significant pain because of the patellar rupture. He made several attempts to  
17 call attention to his pain and to receive swifter examination and treatment of the injury. He filled out  
18 an Inmate/Parolee Appeal Form on September 6, 2004, in which he explained that Dr. Clarke and  
19 another physician, Dr. Duff, had both requested an urgent appointment with an orthopedist. Posada  
20 Decl. Ex. J. Hayes also explained that he was in a lot of pain and that he believed that he might  
21 never be able to walk again correctly if his knee condition were not addressed soon. *Id.* On  
22 September 10, 2004, Hayes completed a Health Service Request Form in which he explained that he  
23 was told at the scene of his accident that he "need[ed] surgery ASAP," and in which he also  
24 explained that he could not lift his leg, could not walk up stairs and that his pain level was at 8 out of  
25 10. *Id.* at Ex. L. Additionally, he stated that before being incarcerated he was scheduled to see an  
26 orthopedic specialist on August 31, 2004. *Id.* Also, on September 10, 2004, he completed a  
27 reasonable modification accommodation request, in which he requested knee surgery and lower tier  
28

1 lower bunk or infirmary housing (Hayes apparently had not been given a first tier lower bunk in  
2 spite of Dr. Clarke's request.) *Id.* at Ex. M.

3 Dr. Christensen met with Hayes on September 23, 2004, in response to Hayes' September 10  
4 modification accommodation request. Christensen Decl. at 1. Dr. Christensen approved Hayes'  
5 request to be assigned to a first tier lower bunk and noted that Dr. Clarke had already approved  
6 Hayes to see an Orthopedic Specialist and had prescribed him medication. *Id.* at 2. Dr. Christensen  
7 denied Hayes' request for infirmary housing. Posada Decl. Ex. P. Dr. Christensen also did not X-  
8 Ray or perform an MRI on Hayes' knee, in spite of recognizing that Hayes' knee was "swollen and  
9 tender, which is consistent with a Patella Tendon Rupture." *Id.*

10 On September 17, 2004, Dr. Williams approved a request for Hayes to be temporarily  
11 removed from San Quentin for a consultation with Dr. Barry on October 1, 2004. Williams Decl. at  
12 2. Dr. Williams also signed a Disability Placement Program Verification that approved Hayes'  
13 housing restriction. *Id.* Dr. Williams never personally examined Hayes. *Id.* Ultimately, Dr. Barry's  
14 office rescheduled the October 1 appointment, and Hayes never met with Dr. Barry.

15 Around October 15, 2004, Hayes was transferred to the Sierra Conservation Center. There,  
16 Dr. St. Clair saw Hayes and noted that he was in pain rated 8-10, had a swollen knee, was hobbling  
17 and on crutches, and had been in line to see an orthopedic specialist but never saw one. Posada  
18 Decl. Ex. R. Dr. St. Clair prescribed Vicodin, assigned him to a lower bunk and wrote that he would  
19 arrange an orthopedic consultation. *Id.* A few days later, on October 18, 2004, Dr. St. Clair  
20 requested an orthopedic consultation for Hayes. On October 28, 2004, Dr. St. Clair placed Hayes on  
21 a medical hold. *Id.* at Ex. U.

22 On December 20, 2004, Hayes finally received an MRI at Doctors Hospital of Manteca. *Id.*  
23 at 7. The MRI revealed an infrapatellar joint effusion, a complete tear of the patellar tendon with  
24 superiorly displaced patella and a small popliteal cyst and subcutaneous edema around the patellar  
25 tendon. *Id.* at Ex. CC. In a followup visit on January 7, 2005, Dr. Bradley D. Williams assessed that  
26 Hayes had a chronic left patella tendon rupture and that he would treat it through reconstructive  
27 surgery using an allograft. *Id.* at Ex. DD. However, before any surgery took place, Hayes was  
28 transferred on February 8, 2005, to Santa Clara County Jail. *Id.* at 8. Hayes returned to San Quentin

1 on April 29, 2005. *Id.* He received another MRI October 13, 2005, from Dr. Jeffrey Tanji, who also  
2 diagnosed a complete rupture of the left patellar region. *Id.* at Ex. RR. Hayes did not have surgery  
3 while in custody and was paroled on December 16, 2005. *Id.* at 9, Ex. SS.

4 On February 7, 2006, Hayes visited with Dr. James Hartford, an orthopedist at the Palo Alto  
5 Medical Center. Dr. Hartford diagnosed a chronic quad tendon rupture that required reconstruction.  
6 *Id.* at Ex. TT. Dr. Hartford noted that because Hayes had not received an acute repair of his  
7 knee, the injury worsened from a patella tendon rupture to a chronic rupture of the infrapatella  
8 tendon. *Id.* Hayes' knee would have recovered fully had he received an acute repair, but instead  
9 "the best [Hayes] could hope for is possibly a 10-15 degree extension lag and possibly flexion to  
10 maybe only 100 degrees of the knee." *Id.* Dr. Hartford performed reconstructive surgery on April  
11 7, 2006. *Id.* at UU.

## 12 II. ANALYSIS

### 13 A. Legal Standard

14 A motion for summary judgment should be granted if "the pleadings, the discovery and  
15 disclosure materials on file, and any affidavits show that there is no genuine issue as to any material  
16 fact and that the movant is entitled to judgment as a matter of law." Fed. R. of Civ. P. 56(c). A fact  
17 is material when it could affect a case's outcome. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,  
18 248 (1986). A material fact presents a genuine issue "if the evidence is such that a reasonable jury  
19 could return a verdict for the nonmoving party." *Id.* On a motion for summary judgment, "the  
20 district court does not assess credibility or weigh the evidence, but simply determines whether there  
21 is a genuine factual issue for trial." *House v. Bell*, 574 U.S. 518, 559-560 (2006).

22 The moving party has the initial burden of production for showing the absence of any  
23 material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 331 (1986). It can satisfy this burden in two  
24 ways. "First the moving party may submit affirmative evidence that negates an essential element of  
25 the nonmoving party's claim. Second, the moving party may demonstrate to the Court that the  
26 nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's  
27 claim." *Id.* The moving party cannot simply conclusively state that the nonmoving party does not  
28

1 have sufficient evidence to establish its case, but rather the moving party must "affirmatively show  
2 the absence of evidence." *Id* at 332.

3 Once the moving party has satisfied the initial burden of production, the burden of proof  
4 shifts to the nonmovant to show that there is a genuine issue of material fact. "When a motion for  
5 summary judgment is properly made and supported, an opposing party may not rely merely on  
6 allegations or denials in its own pleading." Fed. R. of Civ. P. 56(e)(2). The nonmovant must go  
7 beyond its pleadings "by her own affidavits, or by the 'depositions, answers to interrogatories, and  
8 admissions on file . . .'" *Celotex*, 477 U.S. at 324.

9 **B. Evidentiary Objections**

10 Hayes objects to the statement made by each of the three defendants that "[a]t no time was I  
11 deliberately indifferent to Mr. Hayes needs," on the ground that none of the defendants had personal  
12 knowledge of this matter and it is an improper legal conclusion. Evidentiary Objections to the  
13 Decl. of Dr. Clarke and Williams. With respect to the portions of the declarations to which plaintiff  
14 objects, defendants should be viewed as lay witnesses testifying as to their states of mind. As such,  
15 their testimony "is limited to those opinions or inferences which are (a) rationally based on the  
16 perception of the witness, and (b) helpful to a clear understanding of the witness' testimony or the  
17 determination of a fact in issue . . ." Fed. R. Evid. 701. "Deliberately indifferent" is a legal term  
18 regarding the improper treatment of inmates under the Eighth Amendment. But the phrase also has  
19 meaning as it is commonly used. The court considers the subject testimony only has probative  
20 value as to the defendants' states of mind in the sense of its commonly understood meaning and not  
21 as a legal conclusion.

22 **C. Objection to Defendants' Reply**

23 Hayes objects to defendants' reply because it was filed seven days past the due date. The  
24 court is reluctant to consider the late filing but in the interest of adjudicating cases on the merits and  
25 in light of the lack of prejudice to plaintiff, the court will consider the reply as filed.

26 **D. Eight Amendment Violations**

27 "To establish an Eighth Amendment violation, a prisoner 'must satisfy both the objective and  
28 subjective components of a two-part test.' First, there must be a demonstration that the prison

1 official deprived the prisoner of the 'minimal civilized measure of life's necessities.' Second, a  
2 prisoner must demonstrate that the prison official 'acted with deliberate indifference in doing so.'" *Toguchi v Chung*, 391 F.3d 1051, 1057 (9th Cir. 2004) (citation omitted). In terms of the objective  
3 portion of the two-part test, a plaintiff has to demonstrate the failure to treat his or her condition  
4 could have caused "unnecessary and wanton infliction of pain." *Estelle v. Gamble*, 429 U.S. 97, 104  
5 (1976). Deliberate indifference, the subjective component of this two-part test, is more than mere  
6 negligence. *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992). It requires that a prison  
7 official "know[] of and disregard[] an excessive risk to inmate health and safety." *Gibson v. County*  
8 *of Washoe, Nevada*, 290 F.3d 1175, 1187 (9th Cir. 2002). It is not sufficient that an official was  
9 aware of facts from which the inference that a substantial risk of serious harm exists, the prison  
10 official "must also draw the inference." *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). However,  
11 deliberate indifference "may be shown by circumstantial evidence when the facts are sufficient to  
12 demonstrate that a defendant actually knew of a risk of harm." *Lolli v. County of Orange*, 351 F.3d  
13 410, 421 (9th Cir. 2003); *see also Gibson*, 290 F.3d at 1197 (stating in dicta that obvious signs of  
14 mental illness could be enough to demonstrate that prison deputies knew an inmate was mentally  
15 ill). A plaintiff must also show "that the course of treatment was medically unacceptable under the  
16 circumstances . . ." *Jackson v. McIntosh*, 90 F.3d 330, 332 (9th Cir. 1996). This requires showing  
17 more than a difference of medical opinion about a prisoner's treatment. *Sanchez v. Vild*, 891 F.2d  
18 240, 242 (9th Cir. 1989).

20 With regard to the objective portion of the test, Hayes alleges that the defendants were  
21 deliberately indifferent to him as they failed to treat his ruptured patellar tendon in a timely fashion.  
22 Opp'n to Mot. for Summ. J. at 1. After his injury in July of 2004, Hayes did not receive surgery  
23 until April of 2006. As a result, Hayes suffered pain in his right knee for around a year-and-one  
24 half. In his numerous appeals for modification or accommodation, Hayes describes his physical  
25 pain, limited mobility, and fear that his knee would never heal fully if not treated in the near future.  
26 *Id.* at Exs. J, M, P, S. The long term impact of the tendon injury may have been exacerbated by its  
27 non-treatment. According to the medical records Dr. Hartford prepared after seeing Hayes, acute  
28 repair of Hayes' knee could have resulted in a full recovery. The reconstructive surgery that took

1 place in April of 2006 could not provide for full recovery of the knee.<sup>1</sup> These facts support Hayes'  
2 claim that he has suffered significant and prolonged pain because his knee injury was left untreated  
3 for so long.

4 However, the objective prong of the deliberate-indifference test requires that the particular  
5 defendants deprived plaintiff of his rights. *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002).  
6 Here, defendants recommended or approved that Hayes see a specialist, and a specialist appointment  
7 was scheduled with Dr. Barry. But after Dr. Barry's office canceled the appointment, a number of  
8 transfers and Hayes' parole interfered with his prompt treatment. Hayes has offered no evidence that  
9 the named defendant doctors knew of the cancellation or that they engaged in specific conduct that  
10 manifests a deliberate indifference. Hayes has thus failed to demonstrate that the conduct of any  
11 defendant deprived him of "the minimum civilized measure of life's necessities." *Toguchi*, 391 F.3d  
12 at 1057.

13 The subjective portion of the test also requires that the plaintiff show that the defendants  
14 were aware of and disregarded a substantial risk to plaintiff's health, and that plaintiff's medical  
15 treatment was unacceptable. It is undisputed that the defendants provided Hayes with medical  
16 treatment and requested that he see a specialist. Dr. Clarke also noted that Hayes' condition was  
17 "Ortho Urgent" and requested a follow-up in one week's time. Posada Decl. Ex. F. Plaintiff states in  
18 his opposition that "Dr. Clarke should have recommended or ordered, based on the medical records  
19 reviewed, that a medical hold be initiated so that no transfers were initiated until after said time as  
20 Mr. Hayes had received the necessary treatment and/or care or undergone the necessary surgical  
21 treatment to repair his left knee." Opp'n. 4. To satisfy the subjective prong, then, plaintiff must  
22 demonstrate that Dr. Clarke knew of the substantial risk of not initiating a medical hold and  
23 disregarded that risk. Hayes has presented no evidence, circumstantial or otherwise, that Dr. Clarke  
24 knew or should have known that a transfer was likely and posed such a substantial risk. The court  
25 cannot conclude that the subjective prong has been satisfied as to Dr. Clarke.

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26       <sup>1</sup> In their reply, defendants do not expressly object to including Dr. Hartford's diagnosis reflected in  
27 his records but nevertheless characterize it as hearsay. Dr. Hartford's records of Hayes' visit appears  
28 to be a statement prepared for the purpose of a medical diagnosis. Opp'n. to Mot. for Summ. J. Ex.  
TT. It would therefore, properly authenticated, fit into the hearsay exception for statements made  
for the purposes of medical diagnosis. Fed. R. Evid. 803(4).

In his opposition, Hayes makes no suggestion as to any risk that defendants Dr. Christensen and Dr. Williams knew of and disregarded. Indeed, there is no allegation as to how Dr. Christensen and Dr. Williams should have acted differently. Dr. Christensen assigned Hayes to a lower bunk and restricted his use of the stairs. Dr. Christensen Decl. ¶ 5. Dr. Christensen noted that Hayes had already been scheduled to see an Orthopedic Specialist. *Id.* ¶ 4. Dr. Williams' involvement was only to approve Hayes' request to leave San Quentin in order to have a consultation with Dr. Barry. Dr. Williams never personally examined Hayes. Dr. Williams Decl. ¶ 4-5. Hayes thus fails to raise a genuine issue of material fact that any defendant was deliberately indifferent to his medical needs.

9       Despite the very real problems and lengthy delays that marked the treatment of Hayes' knee  
10      injury, Hayes has failed to raise a genuine issue of material fact that *any of the named defendants* in  
11      this action deprived him of his rights under the Eighth Amendment. Although the court's prior  
12      tentative ruling denied the motion because there appeared to be a material issue of fact with respect  
13      to whether Hayes suffered severe discomfort and injury as a result of the failure to provide  
14      orthopedic care and surgery for him earlier, a closer examination of the evidence fails to establish a  
15      triable issue of fact that any of the named defendants were guilty of being deliberately indifferent.  
16      Plaintiff offers no evidence that the named doctors knew, or had reason to know, that their orders  
17      were not followed or that plaintiff's appointment with an orthopedic specialist had been cancelled

### III. ORDER

19 For the foregoing reasons, the court, although sympathetic with plaintiff's complaint, grants  
20 defendants' motion for summary judgment.

21  
22 Dated: 09/15/09

Ronald M. Whyte  
RONALD M. WHYTE  
United States District Judge

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10 | Dated: 09/15/09

JAS  
**Chambers of Judge Whyte**

# **United States District Court**

For the Northern District of California